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**Third Declaration of William G. Clark in Opposition to Motion for  
Summary Judgment 07-2-02323-2-38**

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THE HONORABLE PARIS K. KALLAS

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

MATHEW & STEPHANIE McCLEARY,  
on their own and on behalf of KELSEY &  
CARTER McCLEARY, their two children  
in Washington's public schools;  
ROBERT & PATTY VENEMA, on their  
own behalf and on behalf of HALIE &  
ROBBIE VENEMA, their two children in  
Washington's public schools; and  
NETWORK FOR EXCELLENCE IN  
WASHINGTON SCHOOLS ("NEWS"), a  
state-wide coalition of community groups,  
public school districts, and education  
organizations,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

NO. 07-2-02323-2 SEA

THIRD DECLARATION OF  
WILLIAM G. CLARK IN  
OPPOSITION TO MOTION FOR  
SUMMARY JUDGMENT

I, WILLIAM G. CLARK, declare as follows:

1. I am one of the attorneys representing Respondent State of Washington and  
testify to the matters herein based on my personal knowledge.

2. Attached to this Declaration as Exhibit A is a true and correct copy of excerpts  
from Webster's Unabridged Dictionary (1863).

**ORIGINAL**

THIRD DECLARATION OF WILLIAM G.  
CLARK IN OPPOSITION TO MOTION FOR  
SUMMARY JUDGMENT

ATTORNEY GENERAL OF WASHINGTON  
Complex Litigation Division  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7352

3. Attached to this Declaration as Exhibit B is a true and correct copy of the unpublished Court of Appeals, Division I opinion of *Camer v. Brouillet*, Case No. 10227-3-I (1982).

WILLIAM G. CLARK declares under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

SIGNED this 3d day of August, 2007, at Seattle, Washington.

William G. Clark  
WILLIAM G. CLARK

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Agnes Roche  
AGNES ROCHE

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1863.



## PRO

## PRO

## PRU

3. Not polished; rude; as, *provincial* accent or manners. *Dryden.*  
 4. Pertaining to an ecclesiastical province, or to the jurisdiction of an archbishop; not ecumenical; as, a *provincial* synod. *Ayliffe.*

**PRO-VIN'CIAL**, *n.* Among the Roman Catholics, a monastic superior, who, under the general of his order, has the direction of all the religious houses of the same fraternity in a given district, called a *province* of the order. *Murdock.*

2. A person belonging to a province. *Burke.*  
**PRO-VIN'CIAL-ISM**, *n.* A peculiar word or manner of speaking in a province or district of country remote from the principal country or from the metropolis. *Marsh.*

**PRO-VIN'CIAL-IST**, *n.* One who lives in a province. *Marsh.*

**PRO-VIN'CIAL-I-TY**, *n.* Peculiarity of language in a province. *Warren.*

**PRO-VIN'CIATE**, *v. t.* To convert into a province. *(Unusual.)* *Bunnett.*

**PRO-VINE**, *v. i.* [*Fr. provigner; pro and vine, a vine.*]

To lay a stock or branch of a vine in the ground for propagation. *Johnson.*

**PROVING**, (*prov'ing*), *ppr.* Trying; ascertaining; evincing; experiencing.

**PRO-VI'SION**, (*-vish'un*), *n.* [*Fr. from L. provideo, provide.* See *PROVIDE*.]

1. The act of providing or making previous preparation.

2. Things provided; preparation; measures taken beforehand; either for security, defense, or attack, or for the supply of wants. We make *provision* to defend ourselves from enemies; we make *provision* for war; we make *provision* for a voyage or for erecting a building; we make *provision* for the support of the poor. Government makes *provision* for its friends. *Johnson.*

3. Stores provided; stock; as, *provision* of victuals; *provision* of materials. *Kneller.*

4. Victuals; food; provender; all manner of eatables for man and beast; as, *provisions* for the table or for the family; *provisions* for an army. *Johnson.*

5. Previous stipulation; special-enactment-in-a statute; terms or agreement made, or measures taken for a future exigency. *Davies.*

In the law, no *provision* was made to abolish the barbarous customs of the Irish. *Davies.*

6. Among Roman Catholics, a previous nomination by the pope to a benefice before it became vacant, by which practice the rightful patron was deprived of his presentation. *Blackstone.*

**PRO-VI'SION**, (*-vish'un*), *v. t.* To supply with victuals or food. The ship was *provisioned* for a voyage of six months. The garrison was well *provisioned*.

**PRO-VI'SION-AL**, (*-vish'un-al*), *a.* [*Fr. provisional*.]

Provided for present need or for the occasion; temporarily established; temporary; as, a *provisional* government or regulation; a *provisional* treaty.

**PRO-VI'SION-AL-LY**, *adv.* By way of provision; temporarily; for the present exigency. *Locke.*

**PRO-VI'SION-A-RY**, *a.* Provisional; provided for the occasion; not permanent. *Burke.*

**PRO-VI'SION-ED**, *pp.* Supplied with food.

**PRO-VI'SION-ING**, *ppr.* Furnishing with supplies of food.

**PRO-VI'SO**, *n.* [*L. provisos; ablative proviso, it being provided.*]

An article or clause in any statute, agreement, contract, grant, or other writing, by which a condition is introduced; a conditional stipulation that affects an agreement, contract, law, grant, &c. The charter of the bank contains a *proviso* that the legislature may repeal it at their pleasure.

**PRO-VI'SOR**, *n.* [*Fr. proviseur.*]

1. In church affairs, a person appointed by the pope to a benefice before the death of the incumbent, and to the prejudice of the rightful patron. Formerly, the pope claimed the right of presenting to church livings, and it was his practice to nominate persons to benefices by anticipation, or before they became vacant; the person thus nominated was called a *provisor*. In England, this practice was restrained by statutes of Richard II. and Henry IV.

More sharp and penal laws were devised against *provisors*; it being enacted that whoever disturbs any patron in the presentation to a living by virtue of any papal provision, such *provisor* shall pay fine and ransom to the king at his will, and be imprisoned till he renounces such provision. *Blackstone.*

2. The purveyor, steward, or treasurer of a religious house. *Conc.*

**PRO-VI'SOR-Y**, *a.* Making temporary provision; temporary. *State Papers.*

**PRO-VI'SION**, *n.* [*Fr. from L. provocatio.* See *PROVOKE*.]

1. Any thing that excites anger; the cause of resentment. *1 Kings xxi.*

Harden not your hearts, as in the provocation. — *Ps. xcv.*

2. The act of exciting anger.

3. An appeal to a court or judge. [*A Latinism, not now used.*]

4. Incitement. [*Not used.*]

**PRO-VOK'E-A-TIVE**, *a.* Exciting; stimulating; tending to awaken or incite appetite or passion.

**PRO-VOK'E-A-TIVE**, *n.* Any thing that tends to excite appetite or passion; a stimulant; as, a *provocative* of hunger or of lust. *Addison.*

**PRO-VOK'E-A-TIVE-NESS**, *n.* The quality of being provocative or stimulating.

**PRO-VOK'A-BLE**, *a.* That may be provoked. *Cudworth.*

**PRO-VOKE**, *v. t.* [*L. provoeco, to call forth; pro and voco, to call; Fr. provoquer; IL provocare; Sp. provocar.*]

1. To call into action; to arouse; to excite; as, to *provoke* anger or wrath by offensive words, or by injury; to *provoke* war.

2. To make angry; to offend; to incense; to enrage.

Ye fathers, *provoke* not your children to wrath. — *Eph. vi.*

Often *provoked* by the insolence of some of the bishops. *Clarendon.*

3. To excite; to cause; as, to *provoke* perspiration; to *provoke* a smile. *Arbutnot.*

4. To excite; to stimulate; to incense.

The taste of pleasure *provokes* the appetite, and every successive indulgence of vice which is to form a habit, is easier than the last. *Buckminster.*

5. To challenge.

He now *provokes* the seagods from the shore. *Dryden.*

6. To move; to incite; to stir up; to induce by motives. *Rom. x.*

Let us consider one another to *provoke* to love and to good works. — *Heb. x.*

7. To incite; to rouse; as, to *provoke* one to anger. *Deut. xxii.*

**PRO-VOKE**, *v. i.* To appeal. [*A Latinism, not used.*]

**PRO-VOK'ED**, (*pro-vok't*), *pp.* or *a.* Excited; roused; incited; made angry; incensed.

**PRO-VOK'ER**, *n.* One that excites anger or other passion; one that excites war or sedition.

2. That which excites, causes, or promotes. *Shaks.*

**PRO-VOK'ING**, *ppr.* Exciting into action; inciting; inducing by motives; making angry.

2. a. Having the power or quality of exciting resentment; tending to awaken passion; as, *provoking* words; *provoking* treatment.

**PRO-VOK'ING-LY**, *adv.* In such a manner as to excite anger.

**PROVOST**, (*prov'ost*), *n.* [*Sax. profost, profast; Dan. provost; G. probst, probst; Arm. provost; Fr. probste; Port. and Sp. probste; IL. proposto; from the L. propostus, placed before, from propone; pra and posto, to set or place.*]

In a general sense, a person who is appointed to superintend or preside over something; the chief magistrate of a city or town; as, the *provost* of Edinburgh or of Glasgow, answering to the mayor of other cities; the *provost* of a college, answering to president. In France, formerly, a *provost* was an inferior judge who had cognizance of civil causes.

The grand *provost* of France, or of the household, had jurisdiction in the king's house, and over its officers.

The *provost* marshal of an army, (usually pronounced *pro-vost*), is an officer appointed to arrest and secure deserters and other criminals, to hinder the soldiers from pillaging, to indict offenders and see sentence passed on them and executed. He also regulates weights and measures. He has under him a lieutenant and a clerk, an executioner, &c. *Encyc.*

The *provost* marshal in the navy, (usually pronounced *pro-vost*), has charge of prisoners, &c.

The *provost* of the mint, is a particular judge appointed to apprehend and prosecute false coiners. *Encyc.*

*Provost of the king's stables*, is an officer who attends at court, and holds the king's stirrup when he mounts his horse. *Encyc.*

**PROVOST-SHIP**, *n.* The office of a provost. *Hakewill.*

**PROW**, *n.* [*Fr. proue; It. prua and proda; Sp. proa.* These may be from the *L. prora*; but *qu.* is not *proda* the original word, and *proa* a contraction of *prodera*? The primary sense is, that which projects or stretches forward.]

1. The fore part of a ship. *Dryden.*

2. In seamen's language, the beak or pointed cut-water of a xebec or galley. The upper part is usually furnished with a grating platform. *Mar. Dict.*

3. The name of a particular kind of vessel used in the East Indian seas.

**PROW**, *a.* [*Fr. preux.*] Valiant; *preux*, most valiant. [*Not in use.*]

**PROWESS**, *n.* [*Fr. prowess; It. prodezza, from proda, brave, and as a noun, profit, benefit; Sp. proeza.* The primary sense of the root is, to stretch, shoot, or advance forward, and hence the sense of profit.]

Bravery; valor; particularly, military bravery; gallantry; intrepidity in war; fearlessness of danger.

Men of such *prows* as not to know fear in themselves. *Sidney.*

**PROWEST**, *a.* [*superl. of prou.*] Bravest. [*Not in use.*]

**PROWL**, *v. t.* [I know not the origin of this word, nor from what source it is derived. It may be derived from the root of *stroll*, *troll*, with a different prefix.]

To rove over.

He *prows* each place, still in new colors decked. *Sidney.*

**PROWL**, *v. i.* To rove or wander, particularly for prey, as a wild beast; as, a *prowing* wolf. *Milton.*

2. To rove and plunder; to prey; to plunder. *Tasson.*

**PROWL**, *n.* A roving for prey; colloquially, something to be seized and devoured. *Thomson.*

**PROWLER**, *n.* One that roves about for prey.

**PROWL'ING**, *ppr.* or *a.* Wandering about in search of prey or plunder.

**PROX'ENE**, *n.* [*Gr. προξενος.*]

In Grecian antiquities, an officer who had the charge of superintending strangers. *Brand.*

**PROXI-MAL**. See *PROXIMATE*.

**PROXI-MATE**, *a.* [*L. superl. proximus; Fr. proche; approucher, to approach; reprocher, to reproach.* The primary sense of the root is to drive or press. See *Class Brg.*]

Nearest; next. A *proximate* cause is that which immediately precedes and produces the effect, as distinguished from the remote, mediate, or predisposing cause. *Watts.*

*Proximate principle*; a name given to the distinct compounds which exist ready formed in animals and vegetables, such as albumen, fat, sugar, &c. *Brand.*

**PROXI-MATE-LY**, *adv.* Immediately; by immediate relation to or effect on. *Benley.*

**PROX'IME**, *a.* Next; immediately. [*Not used.*]

**PROX'IM-ITY**, *n.* [*Fr. proximité; L. proximitas.*]

The state of being next; immediate nearness either in place, blood, or alliance. The succession to the throne, and to estates, is usually regulated by *proximity* of blood. *Dryden.*

**PROXY**, *n.* [*Contracted from procuracy, or some word from the root of procure, procurator.*]

1. The agency of another who acts as a substitute for his principal; agency of a substitute; appearance of a representative. None can be familiar by *proxy*. None can be virtuous or wise by *proxy*.

2. The person who is substituted or deputed to act for another. A wise man will not commit important business to a *proxy*, when he can transact it in person. In England, any peer may make another lord of parliament his *proxy* to vote for him in his absence. *Blackstone.*

3. A writing by which one person authorizes another to vote in his place.

4. In popular use, an election, or day of voting for officers of government in some of the States.

**PROXY-SHIP**, *n.* The office or agency of a proxy.

**PRUCE**, *n.* [*from Prussia.*] Prussian leather. [*Not in use.*]

**PRUDE**, *n.* [*Fr. prude, wise, discreet, sober, formal, precise; D. preutsck, prudish, and proud; G. spröde, a prude, and shy, cold, reserved, coy, demure, and applied to metals, brittle, friable; Dan. sprödig, eager, brittle, harsh, dry, rugged; W. pruz, (pruich), prudent, discreet, serious, and, sorrowful; Goth. frods, prudent; Gr. φρονιμ, prudence; Goth. frath, mind, intellect; frathgan, to be wise, to understand. The Goth. frod signifies both wise, prudent, and broken; D. wroed, prudent. We see that prude, prudent, and proud, are from the same root. The sense of brittle would indicate that these words belong to the same family with the Dan. dryder, to break; and the radical elements are the same. The Welsh pruz is from tending out or reaching, hence pryder, anxiety, a stretching of the mind. The sense of prude is probably from stretching, straitness, stiffness; and the sense of wise is derivative. Prudence is from the same root, implying care, a tension of mind.]*

A woman of great reserve, coyness, affected stiffness of manners, and scrupulous nicety.

Less modest than the speech of *prudes*. *Swift.*

**PRUDENCE**, *n.* [*Fr. from L. prudentia; IL. prudentia; Sp. prudencia. See PRUDE.*]

Wisdom applied to practice. *Johnson.*

Prudence implies caution in deliberating and consulting on the most suitable means to accomplish valuable purposes, and the exercise of sagacity in discerning and selecting them. Prudence differs from wisdom in this, that prudence implies more caution and reserve than wisdom, or is exercised more in foreseeing and avoiding evil, than in devising and executing that which is good. It is sometimes mere caution or circumspection.

Prudence is principally in reference to actions to be done, and due means, order, season, and method of doing or not doing. *Hale.*

**PRUDENT**, *a.* Cautious; circumspect; practically

FATE, FAR, FALL, WHAT, METE, PREY, PINE, MARINE, BIRD, NOTE, DOVE, MOVE, WOLF, BOOK.



## EDU

by a large or splendid building. The word is not applied to a mean building, but to temples, churches, or elegant mansion-houses, and to other great structures. *Milton. Addison.*

ED-UF-UCIAL, (ed-e-fish'al), *a.* Pertaining to edifices, or to structure.

ED-UF-ED, (ed'e-fide), *pp.* Instructed; improved in literary, moral, or religious knowledge.

ED-UF-ER, *n.* One that improves another by instructing him.

ED-UF-ING, *v. t.* [*L. edifico; Fr. édifier; Sp. edificar; It. edificare; from L. edes, a house, and facio, to make.*]

1. To build, in a literal sense. [*Not now used.*]

2. To instruct and improve the mind in knowledge generally, and particularly in moral and religious knowledge, in faith and holiness.

*Edify one another. — 1 Thess. v.*

ED-UF-ING, *pp.* Building up in Christian knowledge; instructing; improving the mind.

3. *a.* Adapted to instruct.

ED-UF-ING-LY, *adv.* In an edifying manner.

ED-UF-ING-NESS, *n.* The quality of being edifying.

ED-ULE, *n.* [*L. edilis, from edes, a building.*]

A Roman magistrate, whose chief business was to superintend buildings of all kinds, more especially public edifices, temples, bridges, aqueducts, &c.

The ediles had also the care of the highways, public places, weights and measures, &c. *Encyc.*

ED-ULE-SHIP, *n.* The office of edile in ancient Rome.

ED-UT, *v. t.* [*from L. edo, to publish; e and do, to give.*]

1. Properly, to publish; more usually, to superintend a publication; to prepare a book or paper for the public eye, by writing, correcting, or selecting the matter.

Those who know how volumes of the fathers are generally edited. *Christ. Observer.*

2. To publish.

Abelard wrote many philosophical treatises which have never been edited. *Enfield.*

ED-UT-ED, *pp.* Published; corrected; prepared and published.

ED-UT-ING, *pp.* Publishing; preparing for publication.

ED-UT-IO PRIN-CEPS, (e-dish'e-o), [*L.*] The earliest printed edition of an author. *Branda.*

ED-UT-ION, (e-dish'un), *n.* [*L. editio, from edo, to publish.*]

1. The publication of any book or writing; as, the first edition of a new work.

2. Reproduction, sometimes with revision or correction; as, the second edition of a work.

3. Any publication of a book before published; also, one impression, or the whole number of copies published at once; as, the tenth edition.

ED-UT-ION-ER, *n.* The old word for Editor.

ED-UT-OR, *n.* [*from edo, to publish.*] *Gregory.*

1. A publisher; particularly, a person who superintends an impression of a book; the person who revises, corrects, and prepares a book for publication, as Erasmus, Scaliger, &c.

2. One who superintends the publication of a newspaper.

ED-UT-ORIAL, *a.* Pertaining to an editor, as editorial labors; written by an editor, as editorial remarks.

ED-UT-OR-SHIP, *n.* The business of an editor; the care and superintendence of a publication. *Walsh.*

ED-UT-RESS, *n.* A female editor.

ED-UT-UTE, *v. t.* [*Low L. edutur, from edes, a temple or house.*]

To defend or govern the house or temple. [*Not in use.*]

ED-UT-CA-BLE, *a.* That may be educated.

ED-UT-CATE, (ed'yu-kate), *v. t.* [*L. educo, educare; e and duco, to lead; It. educare; Sp. educar.*]

To bring up, as a child; to instruct; to inform and enlighten the understanding; to instill into the mind principles of arts, science, morals, religion, and behavior. To educate children well is one of the most important duties of parents and guardians.

ED-UT-CATED, *pp.* or *a.* Brought up; instructed; furnished with knowledge or principles; trained; disciplined.

ED-UT-CATING, *pp.* Instructing; enlightening the understanding, and forming the manners.

ED-UT-CATION, *n.* [*L. educatio.*]

The bringing up, as of a child; instruction; formation of manners. Education comprehends all that series of instruction and discipline which is intended to enlighten the understanding, correct the temper, and form the manners and habits of youth, and fit them for usefulness in their future stations.

To give children a good education in manners, arts, and science is important; to give them a religious education is indispensable; and an immense responsibility rests on parents and guardians who neglect these duties.

ED-UT-CATION-AL, *a.* Pertaining to education; derived from education; as, educational habits. *Smith.*

## EFF

ED-UT-EA-TOR, *n.* One who educates. *Beddoes.*

ED-UCER, *v. t.* [*L. educo, educi; e and duco, to lead.*]

To bring or draw out; to extract; to produce from a state of occultation.

The eternal art educating good from ill. *Pope.*

ED-UCED, (o-dūste'), *pp.* Drawn forth; extracted; produced.

ED-UCING, *pp.* Drawing forth; producing.

ED-UCT, *n.* [*L. educum, from educo.*]

Extracted matter; that which is educed; that which is brought to light by separation, analysis, or decomposition.

We must consider the educts of its analysis by Bergman, &c. *Kirwan.*

ED-UC-TION, *n.* The act of drawing out or bringing into view.

ED-UCTOR, *n.* That which brings forth, elicits, or extracts.

Stimulus must be called an educator of vital ether. *Darwin.*

ED-UL-CO-RATE, *v. t.* [*Low L. edulo, from dulcis, sweet; Fr. edulcorer.*]

Literally, to sweeten. In old chemistry, to render substances more mild, by freeing them from acids and salts, or other soluble impurities, by washing.

In modern chemistry, to cleanse pulverulent substances, by washing away all particles soluble in water. *Ure.*

ED-UL-CO-RA-TED, *pp.* Purified from acid or other foreign substances.

ED-UL-CO-RA-TING, *pp.* Purifying from acid or foreign substances.

ED-UL-CO-RATION, *n.* Literally, the act of sweetening.

In chemistry, the act of freeing pulverulent substances from acids or any soluble impurities, by repeated affusions of water. *Ure.*

ED-UL-CO-RATIVE, *a.* Having the quality of sweetening or purifying by affusion.

ED-WARDS-ITE, *n.* [*from Gov. H. W. Edwards.*]

A mineral identical with monazite. *Dana.*

EEL, *n.* [*Sax. æl; G. aal; D. aal; Dan. id.; Sw. ål; Gipsy, æl; Turk. ilan.*]

The popular name of the *Anguilla*, a genus of soft-finned fishes belonging to the order of Apodes. The head is smooth; there are ten rays in the membrane of the gills; the eyes are covered with a common skin; the body is cylindrical and slimy. Eels, in some respects, resemble reptiles, particularly, in their manner of moving by a serpentine winding of the body; and they often creep upon land, and wander about at night in search of snails or other food. In winter, they lie buried in mud. They grow to the weight of fifteen or twenty pounds; and the conger eel is said to grow to a hundred pounds in weight, and to ten feet in length. They are esteemed good food. *Partington. P. Cyc.*

EEL-FISH-ING, *n.* The act or art of catching eels.

EEL-POUT, *n.* A kind of basket used for catching eels.

EEL-ROUT, *n.* The burbot, a fresh-water fish, somewhat resembling the eel in appearance; hence the name. *Jardine's Nat. Lib.*

EEL-SKIN, *n.* The skin of an eel.

EEL-SPEAR, *n.* A forked instrument used for catching eels.

E'EN, a contraction for *even*, which see. [*Tag eels.*]

I have e'en done with you. *L'Estrange.*

2. The old plural for *Evans*.

And e'en with fatness swollen were his e'en. *Spenser.*

ETER, (ær), contracted from *Evra*, which see.

EFFA-BLE, *a.* [*L. effabilis, from effor; æ and for, to speak.*]

Utterable; that may be uttered or spoken.

[This word is not used; but *INEFFABLE* is in common use.]

EF-FACE', *v. t.* [*Fr. effacer, from the L. ex and facio or facies.*]

1. To destroy a figure on the surface of any thing, whether painted or carved, so as to render it invisible, or not distinguishable; as, to efface the letters on a monument.

2. To blot out; to erase, strike, or scratch out, so as to destroy or render illegible; as, to efface a writing; to efface a name.

3. To destroy any impression on the mind; to wear away; as, to efface the image of a person in the mind; to efface ideas or thoughts; to efface gratitude. *Dryden.*

To deface is to injure or impair a figure; to efface is to rub out or destroy, so as to render invisible.

EF-FAC-ED, (ef-faste'), *pp.* Rubbed or worn out; destroyed, as a figure or impression.

EF-FACEMENT, *n.* Act of effacing.

EF-FACING, *pp.* or *a.* Destroying a figure, character, or impression, on any thing.

EF-FAS-CI-NATE, *v. t.* To charm; to bewitch. [*Obs.*] [*See FASCINATE.*]

EF-FAS-CI-NATION, *n.* The act of being bewitched or deluded. *Shelton.*

EF-FECT', *v. t.* [*L. effectus, from efficio; ex and facio, to make; It. effetto; Fr. effet.*]

1. That which is produced by an agent or cause; as, the effect of luxury; the effect of intemperance. Poverty, disease, and disgrace, are the natural effects of dissipation.

2. Consequence; event.

To say that a composition is imperfect, is in effect to say the author is a man.

3. Purpose; general intent.

They spoke to her to that effect. — 2 Chron. xxxiv.

4. Consequence intended; utility; profit; advantage.

Christ is become of no effect to you. — Gal. v.

5. Force; validity. The obligation is void and of 6. Completion; perfection. [*No effect.*]

Not so worthy to be brought to heretical effect by fortune or necessity.

7. Reality; not mere appearance; fact.

No other in effect than what it seems. *Denham.*

8. In the plural, effects are goods; movables; personal estate. The people escaped from the town with their effects.

9. In painting, truthful imitation, heightened and rendered more impressive, chiefly by the artifices of light, shade, and color. *Jocelyn.*

Hence, to do any thing for effect, is to do it for the purpose of heightening or exaggerating.

EF-FECT', *v. t.* [*from the noun.*] To produce, as a cause or agent; to cause to be. The revolution in France effected a great change of property.

2. To bring to pass; to achieve; to accomplish; as, to effect an object or purpose.

EF-FECTED, *pp.* Done; performed; accomplished.

EF-FECT-IBLE, *a.* That may be done or achieved; practicable; feasible. *Brown.*

EF-FECT-ING, *pp.* Producing; performing; accomplishing.

EF-FEC-TION, *n.* Creation or production.

2. The geometrical construction of a proposition; a problem or praxis drawn from some general proposition.

EF-FECTIVE, *a.* Having the power to cause or produce; efficacious.

They are not effective of any thing. *Bacon.*

2. Operative; active; having the quality of producing effects.

Time is not effective, nor are bodies destroyed by it. *Brown.*

3. Efficient; causing to be; as, an effective cause. *Taylor.*

4. Having the power of active operation; able; fit for service; as, effective men in an army; an effective force.

EF-FECTIVE-LY, *adv.* With effect; powerfully; with real operation.

This effectively resists the devil. *Taylor.*

[In this sense, *EFFECTUALLY* is generally used.]

EF-FECTIVE-NESS, *n.* The quality of being effective.

EF-FECT'LESS, *a.* Without effect; without advantage; useless. *Shak.*

EF-FECTOR, *n.* One who effects; one who produces or causes; a maker or creator. *Derham.*

EF-FECTS', *n. pl.* Goods; movables; personal estate.

EF-FECTU-AL, *a.* Producing an effect, or the effect desired or intended; or having adequate power or force to produce the effect. The means employed were effectual.

According to the gift of the grace of God given me by the effectual working of his power. — Eph. iii.

2. Veracious; expressive of facts. [*Not used.*]

3. Effectual assassin, in Mitford, is unusual and not well authorized.

EF-FECTU-AL-LY, *adv.* With effect; efficaciously; in a manner to produce the intended effect; thoroughly. The weeds on land for grain must be effectually subdued. The city is effectually guarded.

EF-FECTU-ATE, *v. t.* [*Fr. effectuer. See EFFEC.*]

To bring to pass; to achieve; to accomplish; to fulfill; as, to effectuate a purpose or desire. *Sidney.*

EF-FECTU-A-TION, *n.* Act of effecting. *Dwight.*

EF-FECTU-A-TED, *pp.* Accomplished.

EF-FECTU-A-TING, *pp.* Achieving; performing to effect.

EF-FEM-I-NA-CY, *n.* [*from effeminatus.*] The softness, delicacy, and weakness in men, which are characteristic of the female sex, but which, in males, are deemed a reproach; unmanly delicacy; womanish softness or weakness. *Milton.*

2. Voluptuousness; indulgence in unmanly pleasures; lasciviousness. *Taylor.*

EF-FEM-I-NATE, *a.* [*L. effeminatus, from effeminor, to grow or make womanish, from femina, a woman.*]

See WOMAN.

1. Having the qualities of the female sex; soft or delicate to an unmanly degree; tender; womanish; voluptuous.

The king, by his voluptuous life and mean marriage, became effeminate, and less sensible of honor. *Boon.*

2. Womanish; weak; resembling the practice or

FATE, FAR, FALL, WHAT, — MERE, PREY, — PINE, MARINE, BIRD, — NOTE, DOVE, MOVE, WOLF, BOOK. —

## **EXHIBIT B**

DATE 6/7/82

CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DOROTHY CAMER, for herself and  
as parent and guardian of KIRK  
CAMER and PEPI CAMER,

Appellant,

v.

FRANK B. and JANE DOE BROUILLET,  
SEATTLE SCHOOL DISTRICT, DAVID L.  
and JANE DOE MOBERLY, ELLEN J.  
and JOHN DOE ROE, RICHARD J. and  
JANE DOE ALEXANDER, CHERYL and  
JOHN DOE BLEAKNEY, DOROTHY and  
JOHN DOE HOLLINGSWORTH, PATT and  
JOHN DOE SUTTON, SUZANNE and  
JOHN DOE HITTMAN, HAL and JANE  
DOE REASBY, PAUL and JANE DOE  
HOERLEIN, SHARON S. and JOHN DOE  
HOWARD, SEDONIA and JANE DOE  
YOUNG, MARGARET and JOHN DOE  
CHOW, SHIRLEY L. and JOHN DOE  
HODGSON, HARRY and JANE DOE  
NELSON, DEAN and JANE DOE MCCOY,  
LARRY and JANE DOE PETERSON,  
EDWARD WASIELWESKI, DAVID H. and  
JANE DOE STEVENS, SUE and JOHN  
DOE STEELE, GLORIA and JOHN DOE  
WHITEFORD, JAMES and JANE DOE  
DUGGAN, CHARLES and JANE DOE  
ESTREM, JOHN and JANE DOE OSTREM,  
ROGER and JANE DOE GABELIEN, and  
PENNY and JANE DOE BRADLEY,

Respondents.

NO. 10227-3-I

DIVISION ONE

FILED: JUN 7 1982

CORBETT, J. -- Dorothy Camer, individually and as a parent and guardian, appeals a summary judgment that dismissed her complaint seeking damages for the alleged denial of a basic education for her children.

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The complaint alleges that in June of 1979, Kirk completed the 6th grade and Pepi completed the 5th grade at Jefferson School in the Seattle School District. Their report cards indicated satisfactory or better work. However, both children failed to achieve certain student learning bench marks for their grade level due to an alleged failure by the school district to provide adequate instruction. Plaintiff further alleges that the school staff failed to provide a healthy environment conducive to education and to provide a program to meet the individual and collective needs of plaintiff's children and their fellow students. She concludes with the allegation that because the Seattle School District failed to properly implement the Student Learning Objectives law, RCW 28A.58.090 and .092, and the Basic Education Act, RCW 28A.58.750, plaintiff's children were not provided with a constitutionally guaranteed basic program of education, as required by article 9, section 1 of our state constitution. In support of her complaint, plaintiff submits a long record of correspondence as evidence of her attempts to bring alleged instructional deficiencies to the attention of the defendants. Her most specific objections were (1) a disciplinary measure that separated boys and girls at recess, (2) a school practice of not obtaining excuses from parents for absences and tardiness, and (3) failure of her children to meet "bench mark" learning objectives. The trial court found that there was no issue of material fact, and that the complaint failed to state a claim upon which relief could be granted.

Plaintiff contends that she has a right to seek interpretation of the Basic Education Act and the Student Learning Objectives law under the Uniform Declaratory Judgment Act, RCW 7.24. In her complaint, she prays for declaratory relief affirming the right of all students to a basic education and equal opportunity to receive all the services of the school district. These rights are provided for by article 9 of our state constitution and are not disputed by the defendants. Before the court's declaratory judgment power can be invoked, there must be a justiciable controversy. Port of Seattle v. State Utilities & Transportation Comm'n., 92 Wn.2d 789, 806, 597 P.2d 383 (1979). This requires:

(1) . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

Diversified Industrial Development Corp. v. Ripley, 82 Wn.2d 811, 815, 514 P.2d 137 (1973). The statutory purpose of the act and the indication that it should be liberally construed does not make the issuance of a declaratory judgment mandatory. The granting of a declaratory judgment is discretionary. King County v. Boeing, 18 Wn. App. 595, 601-02, 570 P.2d 713 (1977). The trial court did not abuse its discretion by refusing to grant the requested decree in the absence of a justiciable controversy.

Plaintiff next contends that she has standing to bring a private cause of action under the Student Learning Objectives law. The statute does not expressly provide for a private remedy. She relies upon Cort v. Ash, 422 U.S. 66, 78, 45 L. Ed. 2d 26, 95 S. Ct. 2080 (1975), as authority for an implied remedy. The relevant factors as set out in the Cort decision are: (1) Is the plaintiff one of the class for whose especial benefit the statute was enacted? (2) Is there any indication of legislative intent to create or deny such a remedy? (3) Is it consistent with the underlying purposes of the legislative scheme to imply such a remedy? Id. at 78. Examination of the Senate and House Journals relative to the legislation in question discloses no clear legislative intent to create a duty enforceable in tort flowing from the Seattle School District or the Superintendent of Public Instruction to individual pupils or their parents.

The traditional rule is that a regulatory statute imposes a duty on public officials which is owed to the public as a whole, and that such a statute does not impose any duties owed to a particular individual which can be the basis for a tort claim.

Baerlein v. State, 92 Wn.2d 229, 231, 595 P.2d 930 (1979), citing Halvorson v. Dahl, 89 Wn.2d 673, 676, 574 P.2d 1190 (1978). The purpose of the Student Learning Objectives law is to promote utilization of school district resources so as to provide (a) economies in management and operation and quality education, and (b) a measurable guide by which to gauge actual student attainment. Assuming only for argument that plaintiff's children, by virtue of their status as students, fall within a particular and circumscribed class of persons to be benefited by the statute,

the language and legislative history of the statute are devoid of any intention on the part of the legislature to create a private cause of action for damages. Therefore, the court need not inquire further as to whether such a right exists. Touche Ross & Co. v. Redington, 442 U.S. 560, 576, 61 L. Ed. 2d 82, 99 S. Ct. 2479 (1979); California v. Sierra Club, \_\_\_ U.S. \_\_\_, 68 L. Ed. 2d. 101, 110, 101 S. Ct. \_\_\_ (1981). The plaintiff has failed to submit any state of facts which, if statute or constitutional provision, would entitle her to relief. The court did not err in so finding.

Plaintiff further contends that she was standing to seek judicial relief under the traditional concepts of tort. There are three elements of actionable negligence: (1) existence of duty, (2) breach thereof, and (3) damages proximately caused thereby. Lewis v. Scott, 54 Wn.2d 347, 348 P.2d 488 (1960). Existence of a duty is a question of law not of fact. Bayman v. Clearwater Power Co., 115 Wn. App. 565, 566, 554 P.2d 554 (1976). Interpretation of the statutes relied upon by the plaintiff is also a question of law for the court. State v. Humiston v. Meyers, 61 Wn.2d 772, 777, 380 P.2d 735 (1963); Hearst Corp. v. Hoppe, 90 Wn.2d 123, 130, 580 P.2d 246 (1973); McFadden v. Elma County Club, 26 Wn. App. 195, 203, 613 P.2d 146 (1980).

The plaintiff's cause of action sounds in "educational malpractice," an issue of first impression in this state. The defendants cite cases from other jurisdictions that have



considered the issue and have declined to recognize an actionable "duty of care" in persons and agencies who administer the public educational process. See Peter W. v. San Francisco Unified Sch. Dist., 131 Cal Rptr. 854, 860, 60 Cal.App.3d 823 (1976); Donohue v. Copiague U. Free Sch. Dist., 407 N.Y.S. 2d 874, 878, 64 A.2d 29 (1978), aff'd, 418 N.Y.S. 2d 375 (1979). We do not find it necessary to decide if such an action exists in the State of Washington until a more appropriate case is presented to us. The plaintiff has failed to establish a breach of duty on the part of the defendants. The Seattle School District's duty to educate under the Basic Education Act and to make achievement reports under the Student Learning Objectives statute does not include a duty to insure that every student, including the children of the plaintiff, will be able to achieve every bench mark. The action was properly dismissed by the trial court for failure to state facts giving rise to a cause of action.

Affirmed.

WE CONCUR:

Swanson, J.

Cable, J.

McLennan, J.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.061040, IT IS SO ORDERED.

James W. Anderson  
CHIEF JUDGE